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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No. 294/2001

APPELLANT Bhaulal, S/o. Nandlal Yadav, aged about 22 years, R/o. Foketpara, Bhathapara (Fafadih), P.S. Ganj, Distt. Raipur

Versus

RESPONDENT State of Chhattisgarh, through P.S. Ganj, Distt. Raipur (C.G.)

D.B. : Hon'ble Shri L.C. Bhadoo and Hon'ble Shri Dhirendra Mishra, JJ.

22-6-2007

Shri K.K. Singh, Advocate, for the appellant.

Shri U.N.S. Deo, Addl. Public Prosecutor, for the respondent/State.

Arguments heard.

Oral judgment dictated on *Dais.*

ORAL JUDGMENT

Per L.C.Bhadoo, J. :

This appeal is directed against the judgment of conviction and order of sentence dated 24-2-2000 passed by the 5th Addl. Sessions Judge, Raipur in S.T. No. 215/2000, whereby the learned Additional Sessions Judge after holding accused/appellant guilty for commission of offence under Section 302, 450 and 324 of the Indian Penal Code, sentenced him to undergo imprisonment for life, R.I. for three years and R.I. for one year respectively.

2. Case of the prosecution, in brief, is that in the intervening night of 3rd and 4th April, 2000 when deceased Lekhram along with his wife Phuleshwaribai were sleeping in the house of Radheshyam Khemka, Sainagar, Raipur which was under construction, in that

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	house P.W. 1 Ramkumar along with his wife and other persons were also sleeping in other rooms of the house, at about 1.30 a.m. accused Bhaulal came in the room where deceased Lekhram along with his wife Phuleshwaribai were sleeping. When he touched the body of Phuleshwaribai, she woke up and raised cries, on which Lekhram, husband of Phuleshwaribai also woke up. When he tried to intervene, the accused attacked Lekhram with a knife. When Phuleshwari tried to intervene, he attacked her also. In the meantime, Ramkumar and others also woke up, Ramkumar slapped the accused Bhaulal, however he ran away. The matter was reported by Ramkumar in the Police Station, Ganj under Ex. P-1. The Investigating Officer after registering the crime, left for the scene of occurrence. He seized a quilt (Kathari) made of old clothes, blood stained, plain soil and one piece of wood from the place of occurrence. After giving notice under Ex. P-3, he prepared inquest Ex. P-4 on the body of Lekhram. In the first instance, Lekhram was taken to Khemka Hospital, Raipur which is just near to the place of occurrence where dying declaration Ex. P-18 was recorded by Assistant Sub Inspector. However, Lekhram succumbed to the injuries, therefore body was sent to Medical College Hospital, Raipur where Dr. Sanjay Kumar Dadu (P.W. 8) conducted post mortem and prepared report Ex. P-10. He opined that cause of death was shock and haemorrhage as a result of stab injury on right side of chest injury caused by hard and sharp single edge penetrating object and homicidal in nature, the injury was	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

sufficient to cause death in ordinary course of nature. While in police custody, the accused gave memorandum Ex. P-5, in pursuance of that, he got recovered the knife under Ex. P-6. One Baniyan and full pant of accused Bhaulal were seized under Section P-7. Site plan Ex. P-8 to the place of occurrence was prepared. Knife was sent to the Department of Forensic Medicine, Pt. J.N.M. Medical College, Raipur, which was examined by Dr. Sanjay Kumar Dadu, Asstt. Prof. who found that injury found on the body of Lekhram could be caused by said knife. He prepared report Ex. P-11. Diagram of knife was prepared under Ex. P-12.

3. Injuries of Lekhram were examined by Dr. Sunil Khemka (P.W. 10). He prepared report Ex. P-15-A. Injuries of Phuleshwari were examined by Dr. Sunil Khemka and report Ex. P-16-A was prepared. After completing investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Raipur, who in turn committed the case to the Sessions Judge, Raipur from where learned Additional Sessions Judge received the case on transfer for trial.

4. Prosecution in order to establish the charge against the accused examined 11 witnesses. Statement of the accused was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he has been falsely implicated in the crime in question. Learned Addl. Sessions Judge after hearing the counsel for the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

respective parties, convicted and sentenced the accused as aforementioned.

5. We have heard Shri K.K. Singh, learned counsel on behalf of the appellant and Shri Deo, learned Addl. Public Prosecutor on behalf of the State.

6. Shri K.K. Singh has not disputed the homicidal death of Lekhram. Moreover from the ocular evidence of P.W. 1 Ramkumar and P.W. 2 Phuleshwaribai, it is established that the accused attacked the deceased with the knife. P.W. 8 Dr. Sanjay Kumar Dadu, Asstt. Professor, Department of Forensic Medicine, Pt. J.N.M. Medical College, Raipur who conducted post mortem on the body of Lekhram has stated that there was a surgical stitched stab incised wound present on the right side of chest (upper end-broad), which was obliquely vertical stitching medially margins sharply at lower end acute going upto right lung, there was blood in the muscles and vessels near the ribs, there was an abrasion injury on the right side of chest of the deceased in size of 3.5 x 0.4 cm, there were two incised wounds on the right palm, cause of death was shock and haemorrhage on account of stab injury on right side of the chest. The injury was caused by hard and pointed sharp edged weapon and death was homicidal in nature. This report is Ex. P-10. In view of the above medical and ocular evidence, it is established that the death of Lekhram was homicidal in nature.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

7. As far as involvement of the accused in the crime in question is concerned, learned counsel for the appellant argued that accused was not known to the witnesses and the incident took place in the dark night, therefore, the witnesses were not able to identify the accused, moreover no identification parade was conducted, as such, the prosecution has not been able to establish beyond reasonable doubt that the accused was author of the crime in question.

8. On the other hand, learned counsel for the State supported the judgment of the trial Court.

9. In order to appreciate the arguments advanced by the counsel for the parties, we have perused the evidence of P.W. 1 Ramkumar who has stated that in the fateful night, Lekhram, his brother-in-law and sister Phuleshwari were sleeping in one room of the house which was under construction whereas he along with his wife were sleeping in another room and other persons were also sleeping in the same house. When he heard the cries of wife of Lekhram, he woke up and went towards the room where Lekhram was sleeping. He saw Bhaulal in the room where Lekhram was sleeping. He slapped him but he ran away. When he entered into the room of Lekhram, he saw a stab wound on the chest of Lekhram. He chased Bhaulal but he entered his house and closed the door of the house. Thereafter he returned to the house and took Lekhram to Khemka Hospital. Police were informed on telephone. He lodged report in the police station which is Ex. P-1.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

At about 6.00 a.m. Lekhram succumbed to the injuries in Khemka Hospital. In cross-examination, he has stated that he woke up on asking by his wife, went towards the place of occurrence and saw that there were 15 to 20 persons standing, 8-10 persons were helping Lekhram to stand up. Cries of 'thief, thief' were heard at about 1.00 a.m. in the night. Within minutes of his waking up, he reached to the spot, there was darkness, he was at a distance of 30 ft. from the accused. When accused started running, he chased him, thereafter he disappeared, therefore, he returned. He saw the accused entering his house. When they went for sleep, light was switched off. Accused was not known to him prior to the incident, when police brought the accused then he came to know the name of the accused.

10. P.W. 2 Phuleshwari has stated that in the fateful night at 1.30 am, the accused came near to her and touched her body from waist, therefore, she woke up and raised cries. She asked her husband, her husband also raised cries, on which, the accused attacked him with knife on chest as a result of which, blood started oozing out. In the meantime, the persons sleeping in that house came. His brother-in-law Ramkumar, Alakhram and others also came. The accused ran away. They chased the accused and even Ramkumar slapped the accused 2-4 times. When she tried to intervene, the accused attacked her also with the knife, as a result of which, she sustained injury on her hand. Thereafter her husband was taken to hospital. In the cross-examination, she has

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

stated that when they raised cries, within minutes, persons came. When these persons came, she was not knowing who attacked, but on a question put by the Court, this witness has stated that the accused attacked her husband, she saw the accused on that day, that is why she is saying that the accused had attacked her husband. On the suggestion by the counsel for the defence, this witness has stated that it is incorrect to say that on asking by police, she has taken the name of the accused that he is the person who attacked her husband. From the evidence of these two witnesses, it is established that the accused was the person who attacked Lekhram.

11. As far as the argument of the counsel for the appellant that there was dark night and identification parade has not been conducted, is concerned, because the accused attacked the deceased with such a close range and initially he came and touched the body of Phuleshwari and thereafter on raising cries by the deceased and Phuleshwari, Ramkumar came and tried to intervene and even he chased him, therefore, in the above circumstances, it cannot be said that these persons were not able to see the accused properly and identify him. The first information report was lodged by Ramkumar in the same night at about 2.10 a.m. whereas the incident took place at 1.30 am and as per the evidence of PW 1 - Ramkumar, the accused was also brought by the police by that time in the night itself, Ramkumar chased and he saw the accused entering his house, therefore, the above fact

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

also corroborates the evidence of Ramkumar that he was able to identify the accused. P.W. 2 Phuleshwari also sustained injury on her palm, and when she was intervening, the accused attacked with knife and that has been proved by the P.W. 10 Dr. Sunil Khemka who examined the injury of Phuleshwari and prepared report Ex. P-16-A. As Ramkumar and Phuleshwari were able to identify the accused from a close distance, therefore, even if the identification parade was not conducted, it does not affect the prosecution case.

12. The knife in question was recovered on the memorandum Ex. P-5 given by the accused under Ex. P-6 at the instance of the accused. Even though the witness of memorandum of seizure namely P.W.5 Dauram has been declared hostile, but the Investigating Officer P.W. 11 Shivkumar Pandey has categorically stated that on 5-4-2000, the accused gave memorandum Ex. P-5 and in pursuance of that, accused got recovered the knife under Ex. P-6. There is no reason to disbelieve the Investigating Officer. The knife in question was sent to P.W. 8 Dr. Sanjay Kumar Dadu who after examination of the knife gave opinion that the injuries which were found on the body of Lekhram could be caused by the knife in question. Therefore, in view of the foregoing discussion, we are of the considered opinion that the prosecution has been able to establish the fact beyond reasonable doubt that the accused was author of the crime in question who inflicted the injury on the body

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

of Lekhram as well as P.W. 2 Phuleshwari, therefore, involvement of the accused in the crime in question is established.

13. Learned counsel for the appellant argued that the prosecution has not been able to establish that the accused attacked the deceased with intention to cause death when the deceased Lekhram woke up and he started raising, in order to escape from the place of occurrence, all of a sudden, he attacked the deceased with knife which landed on the chest, therefore, it cannot be said that the accused attacked the deceased with intention to cause death.

14. On the other hand, Shri Deo supported the judgment of the trial Court.

15. In **Virsa Singh's** case (AIR 1958 SC 465), the Apex Court held that culpable homicide is murder, if both the following conditions are satisfied: i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death viz. that the injury found to be present was the injury that was intended to be inflicted. Therefore, in order to bring home the guilt of the accused for offence punishable under Section 302 of I.P.C. the prosecution must prove that the accused inflicted the injury with

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

intention to cause death and while inflicting injury, he intended that the injury which he is causing is sufficient in the ordinary course of nature to cause death coupled with the intention to cause death. Applying the above principle in the present case, the facts of the present case are that the accused came in the room where deceased Lekhram along with his wife Phuleshwari were sleeping. In the first instance, when he touched the body of Phuleshwari, she woke up and raised cries on which Lekhram also woke up. In order to escape, the accused attacked with the knife which landed on the right side of the chest. There is no evidence in this case that the accused, in fact, attacked the deceased with knife with intention to cause death or with intention to cause such bodily injury which is sufficient in the ordinary course of nature to cause death, therefore, on the given facts, offence under Section 304-I of I.P.C. is made out against the accused.

16. In the result, the appeal partly succeeds. Conviction and sentence imposed upon the appellant under Section 302 of I.P.C. are set aside. Instead thereof, he is convicted under Section 304 – I of I.P.C. and sentenced to undergo R.I. for ten years. It is stated that the accused is in detention since 4-4-2000 till date. Therefore, the accused shall be entitled to set off of the above detention period undergone by him.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

PJ